support in several cases where, as between rival claimants of an obligation of a third person, the one not entitled having received payment, the rightful claimant was denied recovery from the other. *Seargeant* v. *Stryker,* 16 N. J. L. 464; *Butterworth* v. *Gould,* 41 N. Y. 450. *Contra, Claxton* v. *Kay,* 101 Ark. 350. Those cases are distinguished from the principal case in that the plaintiff still had his remedy against the obligor, and the defendant, barring the bogey mistake of law, was bound to make restitution to the obligor. But the court, in our case, met the argument in a much more satisfactory way by stamping it as too technical for this equitable form of action. There was an obvious causal relation between the plaintiff's services and the payment to defendant, and the plaintiff's equity is so strong and defendant's so weak that one wonders whether, if plaintiff had claimed the whole of the fund, he would not have succeeded.

RAILROADS—CROSSING ACCIDENTS—CARE REQUIRED OF AUTOMOBILE DRIVER—DUTY TO STOP, LOOK, AND LISTEN.—The plaintiff's automobile was struck by one of the defendant's trains at a grade crossing, whereby the plaintiff was injured, and now sues. The evidence showed that the train was exceeding the city ordinance speed limit in the city; that no warning signal had been given; that the electric gong was not ringing; that there was an obstructed view; that the plaintiff approached the crossing at the rate of four miles per hour; and that the plaintiff looked and listened, but did not come to a full stop. The defendant contended that the failure to stop made the plaintiff guilty of contributory negligence as a matter of law, and that the judgment should be affirmed for it, regardless of the errors made on the trial. *Held,* that it is "the duty of one about to cross a railroad track to look and listen, and sometimes to stop in order the better to see and hear, yet it is not always incumbent upon him to stop for that purpose; whether he should do so in a given case depends on the circumstances, and if it is doubtful the jury are the judges of it." *Monroe* v. *Chicago & A. Ry. Co.* (Mo., 1919), 219 S. W. 68.

The advent of the automobile as a means of travel and carriage has increased the number of railway crossing accidents and raised the question of the duty of an automobile driver in driving across railway crossings. However, the courts have been unable to agree on this duty. The United States Circuit Court of Appeals, Third Circuit, held that "the duty of an automobile driver approaching tracks where there is a restricted vision to stop, look, and listen, and to do so at a place where stopping, and where looking, and where listening will be effective, is a positive duty." *N. Y. C. & H. R. Ry. Co.* v. *Maidment,* 168 Fed. 21; *Brommer* v. *Pa. Ry. Co.,* 179 Fed. 577. This strict rule has been approved and followed in many states. *Chase* v. *N. Y. C. & H. R. Ry. Co.,* 208 Mass. 137; *Craig* v. *Pa. Ry. Co.,* 243 Pa. 455; *Callery* v. *Ry. Co.,* 139 La. 765; *Thompson* v. *Ry. Co.,* 31 Cal. App. 567; *Wehe* v. *Ry. Co.,* 97 Kan. 794; *Ry. Co.* v. *Zell,* 118 Va. 755. The two Federal cases appeared in 1909 and 1910, respectively, at a time when automobiles first began to be used extensively for business and pleasure. The

duty to stop was based, *first,* on the ease with which an automobile could be stopped at a railway crossing without danger of being frightened if a train should pass near to it, and *secondly,* on the dangerous qualities of an automobile, since, due to its weight and size, it might wreck a train and injure the passengers. However, many courts, like the one in the principal case, have refused to hold that failure to stop is, of itself, contributory negligence as a matter of law. They have refused to follow the reasoning of the other courts that a different rule should be applied to automobiles than to other vehicles, and insist that ordinary rules of negligence should apply. *Walters* v. *Ry. Co.,* 47 Mont. 501; *Hartman* v. *Ry. Co.,* 132 Ia. 584; *Lockridge* v. *Ry. Co.,* 161 Ia. 74; *Pendroy* v. *Ry. Co.,* 17 N. D. 433; *Ry. Co.* v. *Dove,* 184 Ind. 447; *Nichols* v. *G. T. Ry. Co.,* 203 Mich. 372; *L. & N. Ry. Co.* v. *Treavor's Adm.,* 179 Ky. 337; *Kent* v. *Ry. Co.* (Wash.), 183 Pac. 87; *Ry. Co.* v. *Hilgartner* (Texas), 149 S. W. 1091; *Ry. Co.* v. *Schneider,* 257 Fed. 675. To put it in the words of the Indiana court, *Ry. Co.* v. *Dove, supra,* "the fact that one is driving an automobile may have an influence on the question of contributory negligence, just as the number and qualities of horses and the kind of vehicle one is driving may have; but the standard of care to be used, which is necessary to absolve from contributory negligence, is the same, whether the traveler is on foot, on horseback, in a wagon, carriage, or any other vehicle. It is that degree of care which one of ordinary prudence would use in the particular circumstances." Thus these latter authorities hold that the question of contributory negligence is for the jury, except in cases exceptionally free from doubt. *Walter* v. *Ry. Co., supra; Lockridge* v. *Ry. Co., supra; Pendroy* v. *Ry. Co., supra.* There seems to be no valid reason why this absolute duty to stop should be placed on automobile drivers, in the absence of statute, the disregarding of which makes them guilty of contributory negligence as a matter of law. It is a well-known fact that prudent men often do not stop before driving across railway tracks, and whether a person should or should not have stopped, along with looking and listening, should be left to the jury to judge, according to the usual duty in negligence cases, namely, what an ordinarily prudent person would have done under the same or similar circumstances.

STATUTORY CONSTRUCTION—STATUTE AS TO AUTOMOBILE LIGHTS VOID FOR INDEFINITENESS.—A Texas statute, Acts 36th Leg. (1919), c. 161, made it unlawful to operate automobiles, motorcycles or bicycles upon public highways of the state at night time whose front lamps threw forward a light of such glare and brilliancy as to seriously interfere with the sight of drivers of vehicles approaching from an opposite direction. Defendant was indicted under this statute, and he assailed its validity as creating a criminal offense. *Held,* void for indefiniteness; the glare and brilliancy not being properly defined. *Griffin* v. *State* (Tex., 1920), 218 S. W. 494.

There is no doubt that the law requires a certain degree of definiteness in denouncing acts as criminal. LEWIS' SUTHERLAND'S STATUTORY CONSTRUCTION, Vol. I, p. 86. It seems that the reason for the requirement of definite-